



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/306,552	05/06/99	TAGGART	T STEU-2418

005409
ARLEN L. OLSEN
SCHMEISER, OLSEN & WATTS
3 LEAR JET LANE
SUITE 201
LATHAM NY 12110

QM12/1012

EXAMINER

TAWFIK, S

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 10/12/00

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/306,552

Applicant(s)

TAGGART, THOMAS D.

Examiner

Sameh H. Tawfik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 22-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 20) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of the invention of Group I (claims 1-19 and 21) in Paper No. 4 is acknowledged. The traversal is on the ground(s) that there is no undue burden on the Examiner for the search or examination. This is not found persuasive because there would be an undue burden on the Examiner to search and examine the other groups. The other groups of claims would require the examiner to review prior art in other areas of the Office.

The requirement is still deemed proper and is therefore made FINAL.

Claims 20 and 22-34 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 16-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gies (4,862,933) in view of Olsson (5,799,464).

Gies discloses a method for aseptically packaging aseptically sterilized foodstuffs comprising the steps of: providing a plurality of containers (cups 15); aseptically disinfecting the plurality of containers (apparatus 19) see for example (column 4, lines 18-23); aseptically filling the aseptically disinfected plurality of containers with the aseptically sterilized foodstuffs (apparatus 20) see for example (column 4, lines 23-25); and filling the aseptically disinfected plurality of containers at a rate greater than 100 containers per minute (column 4, lines 35 and 36) the machine can be operated to produce 33,600 packages per hour which is equal to 560 packages per minute. Gies does not disclose the container is a glass or plastic bottle. However, Olsson discloses containers made of glass or plastic are filled with product from a filling machine (column 3, lines 38-45).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies' method for aseptically packaging aseptically sterilized foodstuffs by having provided the containers as being made of glass or plastic, as suggested by Olsson and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 4 and 5: the prior art discloses the claimed invention except for the plastic is high density polyethylene. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies' method for aseptically packaging aseptically sterilized foodstuffs by having the plastic formed from high density polyethylene, since it has been held to be within the general skill of a worker in the art to

select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin, supra*.

Regarding claim 6: Gies discloses capping the container with aseptically disinfected lid (device 21) see for example (column 1, lines 37-39).

Regarding claims 8 and 11: Gies discloses disinfecting the interior of the plurality of containers with a hydrogen peroxide (column 1, lines 26-29).

Regarding claim 9: Gies discloses disinfecting the interior of the plurality of the plurality of container includes the application of the hydrogen peroxide spray and the activation and removal of the hydrogen peroxide using a sterilized air (column 1, lines 56-68 and column 2, lines 1 and 2). Gies does not disclose the range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies' method for aseptically packaging aseptically sterilized foodstuffs by having range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller, 105 USPQ* 233.

Regarding claim 10: Gies discloses a feedback control system (controller 60) for maintaining aseptic container conditions.

Regarding claims 17-19: Gies does not disclose specifically the exact level of the sterilization of the foodstuffs to at least 12 log reduction in clostridium botulinum nor the level of

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disinfecting the containers to at least 6 log reduction in spore organisms nor the residual level of hydrogen peroxide is less than .5 ppm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies' method for aseptically packaging aseptically sterilized foodstuffs by having the level of the sterilization of the foodstuffs to at least 12 log reduction in clostridium botulinum and the level of disinfecting the containers to at least 6 log reduction in spore organisms and the residual level of hydrogen peroxide is less than .5ppm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 21: Gies discloses a device for aseptically packaging aseptically sterilized foodstuffs comprising means for providing a plurality of containers (picker device 17); means for aseptically disinfecting the plurality of containers (apparatus 19) see for example (column 4, lines 18-23); means for aseptically filling the aseptically disinfected plurality of containers with the aseptically sterilized foodstuffs (apparatus 20) see for example (column 4, lines 23-25); and means for filling the aseptically disinfected plurality of containers at a rate greater than 100 container per minute (column 4, lines 35 and 36) the machine can be operated to produce 33,600 packages per hour which is equal to 560 packages per minute. Gies does not disclose the container is glass or plastic. However, Olsson discloses containers made of glass or plastic are filled with product from a filling machine (column 3, lines 38-45).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies' device for aseptically packaging aseptically

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sterilized foodstuffs by having had the containers made of glass or plastic, as suggested by Olsson, for the reasons set forth above.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Sizer et al. (5,770,232).

Gies and Olsson do not disclose disinfecting the container by providing oxonia. However, Sizer discloses method of disinfecting the food container by using oxonia (column 2, lines 35-40) to improve the method of disinfecting the food contact surfaces of a food packaging machine (column 3, lines 19 and 20).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies' method for aseptically packaging aseptically sterilized foodstuffs by disinfecting the container by providing oxonia, as suggested by Sizer, in order to improve the method of disinfecting the food contact surfaces of a food packaging machine.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of B. Poole (2,491,015).

Gies and Olsson failed to disclose disinfecting the container's outside surfaces. However, Poole discloses a method of sterilizing food containers (39) from outside (Fig. 4) the food containers (39) fed into a sterilizing fluid tank (1), see for example (column 1, lines 51-55) to sterilize all the parts of the container (column 1, lines 22 and 23).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies' method for aseptically packaging aseptically

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sterilized foodstuffs by disinfecting the container's outside surfaces, as suggested by Poole, in order to sterilize all the parts of the container.

Regarding claim 14: Gies discloses disinfecting the interior of the plurality of the plurality of container includes the application of the hydrogen peroxide spray and the activation and removal of the hydrogen peroxide using a sterilized air (column 1, lines 56-68 and column 2, lines 1 and 2). Gies and Olsson failed to disclose that disinfecting the container's outside surfaces. However, Poole discloses method of sterilizing food containers (39) from outside (Fig. 4) the food containers (39) fed into a sterilizing fluid tank (1), see for example (column 1, lines 51-55) to sterilize all the parts of the container (column 1, lines 22 and 23). The prior art do not disclose the range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies' method for aseptically packaging aseptically sterilized foodstuffs by having range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of B. Poole (2,491,015) and Sizer et al. (5,770,232).

Gies and Olsson failed to disclose disinfecting the container's outside surfaces by providing oxonia. However, Poole discloses method of sterilizing food containers (39) from

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outside (Fig. 4) the food containers (39) fed into a sterilizing fluid tank (1), see for example (column 1, lines 51-55) to sterilize all the parts of the container (column 1, lines 22 and 23) and Sizer discloses method of disinfecting the food container by using oxonia (column 2, lines 35-40) to improve the method of disinfecting the food contact surfaces of a food packaging machine (column 3, lines 19 and 20).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies' method for aseptically packaging aseptically sterilized foodstuffs by sterilizing food containers from outside, as suggested by Poole, in order to sterilize all the parts of the container; and by disinfecting the food container by using oxonia, as suggested by Sizer, in order to improve the method of disinfecting the food contact surfaces of a food packaging machine.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Palaniappan et al. (6,120,730), Katschnig et al. (5,879,643), Turtschan (5,251,423), Lervick (5,053,207), and Affonso (4,370,305) disclose method and apparatus for sterile packaging for foodstuffs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2890. The examiner can normally be reached on Monday - Friday from 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (703) 308-1789. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ST
October 9, 2000



Stephen F. Gerrity
Primary Examiner